

EXHIBIT 2

GUEST ESSAY

Has No Labels Become a Stalking Horse for Trump?

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No Labels, a Washington-based organization run by political and corporate insiders, finds itself in an awkward situation.

After its founding in 2010, the group was praised by moderates in both parties as a force for cooperation and consensus. Now, however, No Labels is a target of criticism because of its plan to place presidential and vice-presidential nominees of its choosing on the 2024 ballot — a step that could tip the outcome in favor of Donald Trump if he once again wins the Republican nomination.

No Labels officials contend that their polling suggests that their ticket could win.

Numerous factors exacerbate the suspicion that whatever its intentions are (or were), the organization has functionally become an asset to the Trump campaign and a threat to the re-election of Joe Biden.

Leaks to the media that prominent Republican donors, including Harlan Crow, Justice Clarence Thomas's benefactor, are contributing to No Labels — which is well on its way to raising \$70 million — suggest that some major donors to No Labels see the organization as a means to promote Republican goals.

No Labels, in turn, has declined to disclose its donors, and the secrecy has served to intensify the concern that some of its contributors are using the organization's plan to run a third-party ticket to weaken the Biden campaign.

A founder and the chief executive of No Labels, Nancy Jacobson, was previously a prominent Democratic fund-raiser. She is married to Mark Penn, a consultant and pollster for Bill and Hillary Clinton; Penn eventually became alienated from both of them.

During the Trump presidency, Penn publicly voiced support for Trump's policies on a number of key issues, in newspaper columns and during appearances on Fox News. Penn is the chief executive and chairman of Stagwell Inc., which owns a polling firm, HarrisX, that conducts surveys for No Labels. He says he has "no role, real or imagined, in this No Labels effort."

The fear in many quarters — from Republican consultants who are members of the anti-Trump Lincoln Project to Democrats of all ideological stripes — is that if the No Labels third-party campaign is carried out, it will help elect Trump.

On April 2, Stuart Stevens, a strategist for the 2012 Mitt Romney campaign and a senior adviser to the Lincoln Project, wrote on X (formerly Twitter):

A 3rd party candidate like @NoLabelsOrg is shopping for will all but guarantee a Trump victory. If you are supporting that candidate, you are helping elect Trump. If that's your goal, just be honest. With a 3rd party candidate, @NoLabelsOrg is operating as arm of Trump campaign.

Members of the bipartisan House Problem Solvers Caucus, which No Labels helped found in 2017, now accuse No Labels of covertly backing Trump.

"No Labels," Representative Abigail Spanberger, Democrat of Virginia, declared, "is wasting time, energy and money on a bizarre effort that confuses and divides voters and has one obvious outcome — re-electing Donald Trump as president."

Last summer, Jacobson told NBC that the group would abandon its plans to run an independent presidential ticket if she and others in the organization became convinced that such a bid would help Trump.

"As a Democrat? Categorically, that will not happen," Jacobson said. "This effort will never — we'll pull it down." She added: "We will not spoil for either side. The only reason to do this is to win."

In many quarters, the response to Jacobson's claim has been incredulity.

"Where's the money — and there are significant bucks involved here — coming from?" asked Joe Klein, a former Time magazine columnist, in a June 21 Substack essay, "Mislabeled: No Labels Has Become a False Flag Trumpist Operation."

The answers, Klein noted, "are murky," but:

we do know one name: Harlan Crow, the sugar daddy who has funded the leisure adventures of Clarence Thomas and the campaigns of other Republicans. Indeed, Crow told The New Republic in April:

"I support No Labels because our government should be about what's best for America, not what's best for either political party. That's also why I've supported candidates from both sides of the aisle who are willing to engage in civil discussions to move our country forward." Ohh-kayyy. Not sure I believe that.

An NBC survey in September found that the presence of third-party candidates on the ballot would shift the outcome from a 46-to-46 tie to a 39-to-36 Trump advantage over Biden.

Equally important, NBC also found that the strongest appeal of third-party candidates is among constituencies Biden must carry, including voters pollsters call persuadable; low-income, working-class and middle-class voters of color; and voters who said they "somewhat" disapproved of Biden.

In the media, the potential No Labels candidates most commonly mentioned are Senator Joe Manchin, Democrat of West Virginia, who is 76 and recently announced his retirement from the Senate, and Larry Hogan, who is 67 and a former Republican governor of Maryland. The organization could also pick someone outside politics, including a military or corporate leader.

Many Democratic leaders and organizations — including Nancy Pelosi, a former House speaker; state Democratic chairs; Third Way, a Democratic think tank; and advisers to President Biden — contend that a No Labels candidate in the race would probably doom Biden's chances of re-election.

Critics of No Labels also argue, crucially, that a third-party candidate who was victorious in just one or two states could prevent both Trump and Biden from reaching the 270 Electoral College votes required to win the presidency.

An outcome like this would throw the election into the House of Representatives for what is known as a contingent election. If no candidate achieves an Electoral College majority, the Constitution provides that "the House of Representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote."

At present, Republicans outnumber Democrats in a majority of state delegations. In a contingent election in the 2025 House, even if Democrats win it back, the state-by-state voting would still be very likely to favor the Republican nominee.

My Times colleague Peter Baker summed up Penn's pro-Trump activities in a 2018 article, "Mark Penn, Ex-Clinton Aide, Dismisses Mueller Inquiry, and the Clintons Along With It":

In a series of recent newspaper columns and appearances on Fox News, Mr. Penn has endorsed Mr. Trump's argument that the investigation by the special counsel, Robert S. Mueller III, was instigated by secret Democratic intriguing. The inquiry, Mr. Penn said, has resorted "to storm trooper tactics" and has become a "scorched-earth effort" to "bring down Donald Trump."

Penn, Baker wrote, "suggested that 'Clinton Foundation operatives' got the F.B.I. to investigate Mr. Trump."

From a different angle, No Labels' plan to nominate a "unity" presidential ticket of its choosing would undercut the open nomination process reformers adopted more than a half-century ago.

After the chaotic 1968 Democratic convention, insurgents forced the adoption of rules requiring that almost all delegates to presidential conventions be chosen through primaries or caucuses, effectively eviscerating the ability of party power brokers to pick nominees behind closed doors.

Since then, the candidates of both major parties have been selected through an arduous process of state contests, in which the candidates seek majority or plurality support in an open competition with relatively full disclosure of contributions and expenditures.

No Labels is gearing up to pick a third-party presidential ticket without the constraints and safeguards of primary elections and caucus contests.

William Galston, a Brookings Institution senior fellow and one of the 2010 founders of No Labels, resigned from the group this year in protest over the group's plan to run presidential candidates.

Over Galston's objections, No Labels began "in 2022 to explore the possibility of an independent bipartisan ticket," he wrote in an email to me. He objected, he said, "not only because I thought this plan had no chance of succeeding but also because I believed that anything that could divide the anti-Trump coalition was too risky to undertake."

Ultimately, Galston continued, he decided he "did not want to be associated with a venture that I believed (and continue to believe) will increase Donald Trump's chances of re-entering the Oval Office."

No Labels' core message is ostensibly a call for bipartisan cooperation so that government can end gridlock and address the problems facing the nation.

In an interview with me conducted on Zoom, Ryan Clancy, No Labels' chief strategist, contended that No Labels' in-house polling shows that an independent ticket would have a good chance of winning a majority of Electoral College votes.

According to Clancy, when voters were asked to choose among Biden, Trump and "an independent, moderate alternative," 60 percent chose the independent alternative. "We could afford to lose 20 percent and still win the Electoral College," he said.

Clancy defended No Labels' decision to keep donors' names secret, arguing that Democratic groups "have explicitly said they want to lean on our supporters" to pressure them to jump ship. "These groups are coming after us."

Jacobson, who was also present on the Zoom interview, said that no final decision on running a third-party candidate will be made until after the Super Tuesday primaries on March 5, 2024. Sixteen states will hold primaries or caucuses that day, along with American Samoa, and the eventual nominees of both major parties will presumably become apparent.

Jacobson said that all bets are off in the event that either Trump or Biden is defeated in the primaries or withdraws. Clancy said No Labels has acquired ballot access in 12 states, with a goal of 34 to be achieved before any nominees are picked. Ballot access in the remaining states and other jurisdictions would be up to the actual candidates to obtain.

One of the many questions facing No Labels is how the organization can select nominees without looking as if the candidates have been chosen in a less-than-democratic process by a small group of No Labels leaders.

“We have not solidified that process,” Jacobson said in the Zoom interview.

I asked Galston how decisions were made at No Labels during the years he was associated with the group. He replied:

The decision-making structure was always a bit of a mystery to me. There were several advisory committees and a board, but Nancy Jacobson, the C.E.O., always seemed to be the ultimate authority. My hunch is that a handful of people — the co-chairs, the lawyers, the largest funders, perhaps others — had an informal veto in key decisions, but Nancy was always focused and persuasive, adept at building internal coalitions and marginalizing dissent.

“In my experience,” he added, “she almost always got her way.”

I asked officials of No Labels a series of questions about decision making, finances and organizational structure. Clancy replied by email.

I asked whether No Labels is a political party. A political party, Clancy replied, “fields candidates up and down the ballot, engages in election activity year after year and spends resources during the general election to help their nominees win. No Labels, Inc., which is a 501(c)(4) social welfare organization, does not do any of this.”

No Labels Inc., he continued, “is only doing ballot access work for one office and for one election. And if No Labels Inc. does end up offering its ballot line to an independent unity ticket, it will not help fund or run that campaign.”

A few more questions and Clancy’s answers:

Why don’t you disclose the names and amounts given by donors? You say you want to prevent harassment, but all political parties reveal their donors. Shouldn’t the financial supporters of a movement that could elect a president or significantly influence the outcome of the next election be a matter of public record?

No Labels Inc. was launched as a 501(c)(4) 14 years ago, and we have never disclosed the individual names of our supporters because they have a right to privacy. Again, No Labels Inc. is not a political party, and we do not participate in elections, so therefore do not have a responsibility to report our funding.

How likely is it that a No Labels ticket would prevent any candidate from getting 270 Electoral College voters, thus making it a contingent election thrown to the House?

No Labels will only offer our ballot line to a unity ticket if we believe it has the chance to win outright in the Electoral College. We believe this is possible, as we have done extensive polling and modeling in all 50 states featuring surveys of tens of thousands of voters, with representative samples from every state. This shows a potential path to victory for a unity ticket in 25 states, representing 286 electoral votes.

How will the No Labels presidential candidate be chosen?

We are still determining the process for how we would select a unity ticket.

How many members does No Labels have? How many members pay dues, and what are the dues?

No Labels Inc. has nearly 100,000 members who either pay dues or take various actions on behalf of the organization, and we have 836,504 email subscribers.

Third Way, a Democratic centrist group, is one of the leading critics of No Labels’ plans to pick a third-party presidential ticket. Matt Bennett, a vice president at Third Way, disputed No Labels’ fundamental claim that its ticket could beat both Biden and Trump:

No one — absolutely not a soul — outside of No Labels thinks they can actually win the election. And that — not the question of which side they’d hurt more as a spoiler — is at the heart of this issue. They’ve said they will pull the plug on this endeavor if they can’t win. So the real question is why they cannot see the overwhelming evidence of the hopelessness of their cause when it’s so blindingly obvious.

Third Way has published at least 15 reports, commentaries and memos faulting No Labels, including an analysis of No Labels' own polling showing that, Third Way contended, "Biden wins the necessary battlegrounds in a two-way race, but No Labels spoils for Trump in a three-way contest."

In recent weeks, Democrats have escalated their attacks on the No Labels plan.

On Nov. 2, Pelosi told reporters, "No Labels is perilous to our democracy."

I asked a number of election experts to assess the No Labels initiative, its financing and its procedures for selecting nominees.

Didi Kuo, the manager of Stanford University's Program on American Democracy in Comparative Perspective, replied to my queries by email.

"While there is precedent for third-party candidates in presidential elections," she wrote, "there is little precedent for an organization backwards-engineering a presidential ticket and agenda."

Asked whether No Labels should be required to register as a political party, she responded:

If No Labels fields candidates, it should register as a political party. It has the basic structure of a modern electoral organization, with leaders, data and campaign analysts, fund-raisers and volunteers. If it is going to use this organization to support candidates running with its label, it is functionally a party — and needs to be subject to the same rules and regulations as the other parties.

A No Labels candidate, Kuo continued,

will likely serve as a spoiler in what is shaping up to be a very tight race between President Biden and former President Trump. Given where No Labels is trying to position itself on the partisan spectrum, it is very likely that its candidate would draw votes from President Biden, rather than Donald Trump — with grave consequences for American democracy.

Seth Masket, a political scientist at the University of Denver, argued that

as long as this ticket is on the ballot in some competitive states, it can still have a substantial impact. Even if it only pulls 1 percent of the vote or so, it matters a great deal whether it pulls more from the Democrats or the Republicans in states like Arizona, Wisconsin and Georgia. It could end up changing the outcome of the election even without winning very many votes.

The failure to disclose donors has been a sticking point. I asked Fred Wertheimer, the founder and president of Democracy 21, a campaign-finance-reform organization, for his assessment. "In my view," he replied, "when No Labels started qualifying in various states to be on the ballot to run a presidential candidate, they were functioning as a political organization under I.R.S. law and should have registered as such under section 527 of the I.R.S. code and disclosed their donors."

It is, Wertheimer continued, "an oxymoron to be a nonprofit group operating under section 501(c)(4) and at the same time operate as a political party to run a candidate for president."

None of the experts I contacted voiced support for the No Labels endeavor, and some were harsh in their criticism. Gary Jacobson (no relation to Nancy Jacobson), a political scientist at the University of California, San Diego, said:

I don't anticipate anything positive coming out of their efforts. If they nominate someone plausibly characterized as a centrist, I think he or she would take more votes from Biden than from Trump, for their positions would overlap more with Biden's than with Trump's.

He went on:

The whole idea of No Labels is weird. The value of the party label for most voters is to give them a pretty clear sign of where they stand on a range of issues. No Labels seems to have an agenda consisting of ideas for policy compromises in the areas of immigration, the economy, medical care and Social Security, avoiding social issues such as abortion or L.G.B.T.Q. rights. Presumably, that's what the No Labels label would tell voters about the positions of any candidate the organization supported. If so, it would be a label. Otherwise, it just means "none of the above."

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